

104TH CONGRESS  
1ST SESSION

# S. 978

To facilitate contributions to charitable organizations by codifying certain exemptions from the Federal securities laws, to clarify the inapplicability of antitrust laws to charitable gift annuities, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 28 (legislative day, JUNE 19), 1995

Mrs. HUTCHISON (for herself and Mr. DODD) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To facilitate contributions to charitable organizations by codifying certain exemptions from the Federal securities laws, to clarify the inapplicability of antitrust laws to charitable gift annuities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Charitable Giving Protection Act of 1995”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

#### TITLE I—AMENDMENTS TO THE SECURITIES LAWS

- Sec. 101. Amendment to the Investment Company Act of 1940.
- Sec. 102. Amendment to the Securities Act of 1933.
- Sec. 103. Amendments to the Securities Exchange Act of 1934.
- Sec. 104. Amendment of the Investment Advisers Act of 1940.
- Sec. 105. Effective dates and applicability.

#### TITLE II—CLARIFICATION OF ANTITRUST LAWS

- Sec. 201. Exemption from antitrust laws.
- Sec. 202. Effective date and applicability.

### 1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) charities have served a unique and essential  
4 role in meeting the needs of the American people;

5 (2) charities have healed the sick, fed the hun-  
6 gry, sheltered the needy, and educated our children;

7 (3) in order to ensure that charities can con-  
8 tinue to meet the needs of the American people, the  
9 Federal Government should do everything possible to  
10 encourage charitable giving;

11 (4) charities should be able to raise funds and  
12 invest funds, both on their own and collectively with  
13 other charities, without excessive Government inter-  
14 vention or unnecessary legal or regulatory require-  
15 ments;

16 (5) the Congress, in passing the Technical Cor-  
17 rections Act of 1988, differentiated between chari-  
18 table gift annuities and annuities issued by commer-  
19 cial organizations for profit; and

1           (6) unlike commercial annuities, charitable gift  
 2           annuities are not issued for profit, and their issu-  
 3           ance, maintenance, and investment by charities is  
 4           not subject to the anticompetitive prohibitions of the  
 5           Federal antitrust laws.

## 6       **TITLE I—AMENDMENTS TO THE** 7       **SECURITIES LAWS**

### 8       **SEC. 101. AMENDMENT TO THE INVESTMENT COMPANY ACT** 9       **OF 1940.**

10       Section 3(c) of the Investment Company Act of 1940  
 11       (15 U.S.C. 80a–3(c)) is amended by inserting after para-  
 12       graph (6) the following new paragraph:

13           “(7)(A) Subject to subparagraph (B), a pooled  
 14       income fund, or any collective trust fund, collective  
 15       investment fund, or similar fund maintained by a  
 16       charitable organization exclusively for the collective  
 17       investment and reinvestment of—

18           “(i) the general endowment fund or other  
 19       funds of one or more charitable organizations;

20           “(ii) assets of a pooled income fund;

21           “(iii) assets contributed to a charitable or-  
 22       ganization in exchange for the issuance of char-  
 23       itable gift annuities;

24           “(iv) assets of a charitable remainder trust  
 25       or of any other trust, the remainder interests of

1 which are irrevocably dedicated to any chari-  
2 table organization;

3 “(v) assets of a charitable lead trust; or

4 “(vi) assets of a trust not described in  
5 clauses (i) through (v), the remainder interests  
6 of which are revocably dedicated to a charitable  
7 organization.

8 “(B) A fund described in subparagraph (A),  
9 and any charitable organization that maintains such  
10 a fund, shall be excluded from treatment as an in-  
11 vestment company in accordance with this sub-  
12 section only if—

13 “(i) each contributor to a pooled income  
14 fund and each settlor of a trust described in  
15 clause (iv), (v), or (vi) of subparagraph (A) is  
16 provided with written information describing  
17 the material terms of the instruments governing  
18 the operation of the pooled income fund, in the  
19 case of a contributor to such fund, or of the  
20 fund in which any assets of such pooled income  
21 fund or such a trust are invested, by the later  
22 of June 30, 1996, or the date of investment in  
23 such fund; and

24 “(ii) each person soliciting gifts, as de-  
25 scribed in subparagraph (A), that will be ad-

1 ministered in any collective trust fund, collective  
2 investment fund, or similar fund maintained by  
3 a charitable organization is either a volunteer  
4 or is employed in the overall fundraising activi-  
5 ties of a charitable organization and receives no  
6 commissions or other special compensation  
7 based on the amount of gifts transferred to  
8 such fund.

9 “(C) The exemption provided by subparagraph  
10 (A)(vi) shall terminate on December 31, 1998.

11 “(D) For purposes of this paragraph—

12 “(i) a trust or fund is ‘maintained’ by a  
13 charitable organization that serves as a trustee  
14 or administrator of the trust or fund or that  
15 has the power to remove the trustees or admin-  
16 istrators of the trust or fund and to designate  
17 new trustees or administrators;

18 “(ii) the term ‘pooled income fund’ has the  
19 same meaning as in section 642(c)(5) of the In-  
20 ternal Revenue Code of 1986;

21 “(iii) the term ‘charitable organization’  
22 means an organization described in paragraphs  
23 (1) through (5) of section 170(c) or section  
24 501(c)(3) of the Internal Revenue Code of  
25 1986;

1           “(iv) the term ‘charitable lead trust’ means  
2           a trust described in section 170(f)(2)(B),  
3           2055(e)(2)(B), or 2522(c)(2)(B) of the Internal  
4           Revenue Code of 1986;

5           “(v) the term ‘charitable remainder trust’  
6           means a charitable remainder annuity trust or  
7           a charitable remainder unitrust, as those terms  
8           are defined in section 664(d) of the Internal  
9           Revenue Code of 1986; and

10          “(vi) the term ‘charitable gift annuity’  
11          means an annuity issued by a charitable organi-  
12          zation that is described in section 501(m)(5) of  
13          the Internal Revenue Code of 1986.”.

14   **SEC. 102. AMENDMENT TO THE SECURITIES ACT OF 1933.**

15          Section 3(a) of the Securities Act of 1933 (15 U.S.C.  
16   77c(a)) is amended by adding at the end the following new  
17   paragraph:

18          “(13) Any security issued by or any interest or  
19          participation in any pooled income fund, collective  
20          trust fund, collective investment fund, or similar  
21          fund that is deemed not to be an investment com-  
22          pany under section 3(c)(7) of the Investment Com-  
23          pany Act of 1940.”.

1 **SEC. 103. AMENDMENTS TO THE SECURITIES EXCHANGE**

2 **ACT OF 1934.**

3 (a) EXEMPTED SECURITIES.—Section 3(a)(12)(A) of  
4 the Securities Exchange Act of 1934 (15 U.S.C.  
5 78c(a)(12)(A)) is amended—

6 (1) in clause (iv) by striking “and” at the end;

7 (2) by redesignating clause (v) as clause (vi);

8 and

9 (3) by inserting after clause (iv) the following  
10 new clause:

11 “(v) any security issued by or any in-  
12 terest or participation in any pooled in-  
13 come fund, collective trust fund, collective  
14 investment fund, or similar fund that is  
15 deemed not to be an investment company  
16 under section 3(c)(7) of the Investment  
17 Company Act of 1940; and”.

18 (b) EXEMPTION FROM BROKER-DEALER PROVI-  
19 SIONS.—Section 3(a) of the Securities Exchange Act of  
20 1934 (15 U.S.C. 78c(c)) is amended by adding at the end  
21 the following new paragraph:

22 “(54) CHARITABLE ORGANIZATIONS.—Notwith-  
23 standing any other provision of this title, a chari-  
24 table organization, as defined in section 3(c)(7) of  
25 the Investment Company Act of 1940, or any trust-

1 ee, director, officer, employee, or volunteer of such  
2 a charitable organization acting within the scope of  
3 such person's employment or duties, shall not be  
4 deemed to be a 'broker', 'dealer', 'municipal securi-  
5 ties broker', 'municipal securities dealer', 'govern-  
6 ment securities broker', or 'government securities  
7 dealer' for purposes of this title solely because such  
8 organization or person buys, holds, sells, or trades in  
9 securities for its own account in its capacity as  
10 trustee or administrator of, or otherwise on behalf of  
11 or for the account of—

12 “(A) such a charitable organization;

13 “(B) a fund that is exempt from the provi-  
14 sions of the Investment Company Act of 1940  
15 under section 3(c)(7) of that Act; or

16 “(C) a trust or other donative instrument,  
17 the assets of which may be contributed to or in-  
18 vested in such funds in accordance with section  
19 3(c)(7) of the Investment Company Act of  
20 1940, or the settlors (or potential settlors) or  
21 beneficiaries of any such trust or other instru-  
22 ment.”.



1 **SEC. 104. AMENDMENT OF THE INVESTMENT ADVISERS ACT**  
2 **OF 1940.**

3 Section 202(a)(11) of the Investment Advisers Act of  
4 1940 (15 U.S.C. 80b-2(a)(11)) is amended—

5 (1) by striking “does not include (A) a bank”  
6 and inserting “does not include—

7 “(A) a bank”;

8 (2) by striking “(B) any lawyer” and inserting  
9 the following:

10 “(B) any lawyer”;

11 (3) by striking “(C) any broker” and inserting  
12 the following:

13 “(C) any broker”;

14 (4) by striking “(D) the publisher” and insert-  
15 ing the following:

16 “(D) the publisher”;

17 (5) by striking “(E) any person” and inserting  
18 the following:

19 “(E) any person”;

20 (6) by striking “or (F) such other” and insert-  
21 ing the following:

22 “(G) such other”; and

23 (7) by inserting after subparagraph (E) the fol-  
24 lowing new subparagraph:

25 “(F) any charitable organization, as de-  
26 fined in section 3(c)(7) of the Investment Com-

pany Act of 1940, or any trustee, director, officer, employee, or volunteer of such a charitable organization acting within the scope of the employment or duties of such person, whose advice, analyses, or reports are provided only to—

“(i) any such charitable organization;

“(ii) a fund that is exempt from the Investment Company Act of 1940 under section 3(c)(7) of that Act, or the trustees or administrators of such fund; or

“(iii) a trust or other donative instrument, the assets of which may be contributed to or invested in such fund in accordance with section 3(c)(7) of the Investment Company Act of 1940, or the trustees, administrators, settlors (or potential settlors), or beneficiaries of any such trust or other instrument; or”.

**SEC. 105. EFFECTIVE DATES AND APPLICABILITY.**

This title and the amendments made by this title shall apply in all administrative and judicial actions pending on or commenced after the date of enactment of this Act, as a defense to any claim that any person, security, interest, or participation of the type described in this title and the amendments made by this title is subject to the

1 provisions of the Securities Act of 1933, the Securities Ex-  
2 change Act of 1934, the Investment Company Act of  
3 1940, or the Investment Advisers Act of 1940, except as  
4 otherwise specifically provided in those Acts.

5 **SEC. 106. PREEMPTION OF STATE LAW.**

6 (a) REGISTRATION REQUIREMENTS.—A security is-  
7 sued by or any interest or participation in any pooled in-  
8 come fund, collective trust fund, collective investment  
9 fund, or similar fund that is exempt from the Investment  
10 Company Act of 1940 under section 3(c)(7) of that Act,  
11 and the offer or sale thereof, shall be exempt from any  
12 law of a State that requires registration or qualification  
13 of securities.

14 (b) TREATMENT OF CHARITABLE ORGANIZATIONS.—  
15 No charitable organization, or any trustee, director, offi-  
16 cer, employee, or volunteer of a charitable organization  
17 acting within the scope of such person's employment or  
18 duties, shall be required to register as, or be subject to  
19 regulation as, a dealer, broker, agent, or investment ad-  
20 viser under the laws of any State solely because such orga-  
21 nization or person buys, holds, sells, or trades in securities  
22 for its own account in its capacity as trustee or adminis-  
23 trator of, or otherwise on behalf of or for the account of—

24 (1) a charitable organization;

1           (2) a fund that is exempt from the Investment  
2       Company Act of 1940 under section 3(c)(7) of that  
3       Act; or

4           (3) a trust or other donative instrument, the as-  
5       sets of which may be contributed to or invested in  
6       such funds in accordance with section 3(c)(7) of the  
7       Investment Company Act of 1940, or the settlors (or  
8       potential settlors) or beneficiaries of any such trusts  
9       or other instruments.

10       (c) STATE ACTION.—Notwithstanding subsections  
11   (a) and (b), during the 3-year period beginning on the  
12   date of enactment of this Act, a State may enact a statute  
13   that specifically refers to this section and provides pro-  
14   spectively that this section shall not preempt the laws of  
15   that State referred to in this section.

16       (d) DEFINITIONS.—For purposes of this section—

17           (1) the term “charitable organization” means  
18       an organization described in paragraphs (1) through  
19       (5) of section 170(c) or section 501(c)(3) of the In-  
20       ternal Revenue Code of 1986;

21           (2) the term “security” has the same meaning  
22       as in section 3 of the Securities Exchange Act of  
23       1934; and

24           (3) the term “State” means each of the several  
25       States of the United States, the District of Colum-

1       bia, the Commonwealth of Puerto Rico, the Virgin  
 2       Islands, Guam, American Samoa, and the Common-  
 3       wealth of the Northern Mariana Islands.

4       **TITLE II—CLARIFICATION OF**  
 5       **ANTITRUST LAWS**

6       **SEC. 201. EXEMPTION FROM ANTITRUST LAWS.**

7       (a) IN GENERAL.—The activities of a charitable or-  
 8       ganization relating to the issuance, maintenance, or in-  
 9       vestment of a charitable gift annuity are exempt from the  
 10      application of the antitrust laws.

11      (b) DEFINITIONS.—For purposes of this section—

12           (1) the term “antitrust laws” means—

13                   (A) the Sherman Act (15 U.S.C. 1 et seq.);

14                   (B) the Clayton Act (15 U.S.C. 12 et  
 15                   seq.);

16                   (C) the Federal Trade Commission Act (15  
 17                   U.S.C. 41 et seq.); and

18                   (D) any State law that is similar to the  
 19                   Acts referred to in subparagraphs (A) through  
 20                   (C).

21           (2) the term “charitable organization” means  
 22           an organization described in paragraphs (1) through  
 23           (5) of section 170(c) or section 501(c)(3) of the In-  
 24           ternal Revenue Code of 1986;

1           (3) the term “charitable gift annuity” means an  
2           annuity issued by a charitable organization that is  
3           described in section 501(m)(5) of the Internal Reve-  
4           nue Code of 1986; and

5           (4) the term “State” means each of the several  
6           States of the United States, the District of Colum-  
7           bia, the Commonwealth of Puerto Rico, the Virgin  
8           Islands, Guam, American Samoa, and the Common-  
9           wealth of the Northern Mariana Islands.

10          (c) STATE ACTION.—Notwithstanding subsections  
11       (a) and (b), during the 3-year period beginning on the  
12       date of enactment of this Act, a State may enact a statute  
13       that specifically refers to this section and provides pro-  
14       spectively that this section shall not preempt the laws of  
15       that State referred to in this section.

16       **SEC. 202. EFFECTIVE DATE AND APPLICABILITY.**

17          The exemption provided for in section 201 shall apply  
18       in any judicial or administrative action pending on or com-  
19       menced after the date of enactment of this Act and shall  
20       serve as a defense to any claim that the sale or issuance  
21       of a charitable gift annuity is subject to any provision of  
22       antitrust laws.

○